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ONLY

April 26, 2022

Re: *United States v. Michelle Morton*, S3 16 Cr. 371 (RA)

Dear Judge Abrams:

We write to provide an update on Ms. Morton's health and to respectfully request that the Court adjourn her surrender date, which is currently scheduled for May 9, 2022, for a period of six months, until November 9, 2022.

Ms. Morton has every intention of reporting to serve her sentence, but we respectfully submit that it is still not safe for her to do so. As detailed below, given the current conditions related to the pandemic, as well as Ms. Morton's continued health challenges, [REDACTED], we believe that a further adjournment of her surrender date is warranted.

BACKGROUND

I. Procedural History

On April 26, 2021, Ms. Morton requested a six-month adjournment of her surrender date in light of the fact that [REDACTED]

[REDACTED] Dkt. No. 969. On May 4, 2021, the Court adjourned Ms. Morton's surrender date, then scheduled for May 18, 2021, to August 18, 2021, and ordered her to provide monthly updates on her health and vaccination efforts. Dkt. No. 970, at 11. Ms. Morton provided updates to the Court on June 4, 2021, July 6, 2021, and August 5, 2021. Dkt. Nos. 971, 975, 976. On August 12, 2021, the Court further adjourned Ms. Morton's surrender date to January 10, 2022. Dkt. No. 977. In light of the rapid spread of the Omicron variant of COVID-19 and Ms. Morton's continued efforts to manage her serious health conditions, Ms. Morton again requested an adjournment on December 23, 2021 which the Court granted on December 27, 2021, further adjourning Ms. Morton's surrender date to May 9, 2022. Dkt. No. 987.

II. Relevant Facts

A. The COVID-19 Omicron Variant and Its New Subvariants Are a Continued Threat to Ms. Morton's Health

The COVID-19 Omicron variant and its emerging subvariants have become the dominant strains in the New York area and are responsible for the current increase of cases in the state. This most recent spike and the increased transmissibility of new subvariants, which is masked by underreporting, intensify the challenges that Ms. Morton will face [REDACTED] serving a period of incarceration.

The Omicron variant is now the dominant strain of COVID-19 globally, with the BA.2 subvariant—which is reported to be 30 to 50 percent more contagious than the previous Omicron subvariant BA.1—dominant in the United States.¹ During the week of April 11, 2022, the United States reported 3,076 new deaths, which was the highest number of COVID-related deaths of any country in the world.²

In New York, two new subvariants of BA.2 have been circulating in the state, and health officials have speculated that these subvariants may be responsible for a recent rise in infections in the region.³ One of these new subvariants is reported to be 23-27% more transmissible than BA.2.⁴ On April 20, New York Governor Kathy Hochul warned that another spike in cases could be underway in the state, and urged New Yorkers to take common sense precautions against the virus.⁵ While cases have not yet reached the levels seen during the Omicron spike in January, Governor Hochul acknowledged that the January surge began with a similar increase in cases like the one being reported now.⁶

¹ *Statement on Omicron Sublineage BA.2*, WORLD HEALTH ORGANIZATION (Feb. 22, 2022), <https://www.who.int/news/item/22-02-2022-statement-on-omicron-sublineage-ba.2>; Charles Schmidt, *What We Know About Omicron's BA.2 Variant So Far*, SCIENTIFIC AMERICAN (Apr. 4, 2022), <https://www.scientificamerican.com/article/what-we-know-about-omicrons-ba-2-variant-so-far1/>.

² *COVID-19 Weekly Epidemiological Update*, WORLD HEALTH ORGANIZATION (Apr. 20, 2022), <https://www.who.int/publications/m/item/weekly-epidemiological-update-on-covid-19---20-april-2022>.

³ Jennifer Millman, *COVID Reinfection Rate in NY County Hit Hard by Contagious Subvariant Is Nearly 3x Average*, CBS (Apr. 20, 2022), <https://www.nbcnewyork.com/news/coronavirus/covid-reinfection-rate-in-ny-county-hit-hard-by-contagious-subvariant-nearly-3x-average/3653903/>.

⁴ Berkeley Lovelace Jr., *A new version of omicron is gaining a foothold in the U.S., CDC finds*, NBC (Apr. 19, 2022) <https://www.nbcnews.com/health/health-news/new-omicron-variant-ba2-12-1-cdc-us-rcna24999>.

⁵ Grace Ashford, *Virus cases are rising in New York, but Hochul says it's hard to predict what form the 'bump' might take*, N.Y. TIMES (Apr. 20, 2022), <https://www.nytimes.com/2022/04/20/nyregion/new-york-covid-hochul.html?smid=url-share>.

⁶ James Barron, *Is New York Headed for a Higher Covid Risk Level?*, N.Y. TIMES (Apr. 21, 2022), <https://www.nytimes.com/2022/04/21/nyregion/is-new-york-headed-for-a-higher-covid-risk-level.html?smid=url-share>.

Currently, New York City is reporting a 49% increase in cases over the last 14 days and a 10% and 26% increase in hospitalizations and deaths, respectively, over the same period.⁷ Fairfield County, where FCI Danbury is located, is reporting a 42% increase in cases, and a 37% and 43% increase in hospitalizations and deaths, respectively, over the last two weeks.⁸ Experts theorize that the number of actual cases of COVID-19 could be as much as three to five times higher than public reports indicate, given the closures of government-funded testing facilities and the prevalence of at-home testing.⁹

Of particular concern is the current COVID Risk status of FCI Danbury, the facility to which Ms. Morton has been designated. FCI Danbury remains the highest possible risk level (Level 3) of the Bureau of Prison Modified Operations Matrix, which is indicative of a high level of transmission risk.¹⁰ All in-person visitation at the facility has been suspended until further notice.¹¹ In January, two United States Senators from Connecticut attempted to visit the women's facility at FCI Danbury in response to complaints related to staffing shortages and lack of coronavirus precautions, and were denied entry.¹²

Although the vaccination rate in federal prisons has increased, imprisonment still poses a significant and unreasonable danger to Ms. Morton's health, given the rapid spread of Omicron and its subvariants, the continuously elevated risk level at FCI Danbury, and Ms. Morton's [REDACTED] detailed below and in prior submissions to this Court. Even before Omicron's arrival, [REDACTED]

⁷ *Tracking Coronavirus in New York City, NY: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/new-york-city-new-york-covid-cases.html> (last visited Apr. 25, 2022).

⁸ *Tracking Coronavirus in Fairfield County, Conn.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/fairfield-connecticut-covid-cases.html> (last visited Apr. 25, 2022).

⁹ James Barron, *Is New York Headed for a Higher Covid Risk Level?*, N.Y. TIMES (Apr. 21, 2022), <https://www.nytimes.com/2022/04/21/nyregion/is-new-york-headed-for-a-higher-covid-risk-level.html?smid=url-share>. For example, The Director of Health and Human Services for Jersey City, New Jersey said that in the course of three months, only two people called in to report positive at-home tests. Madison Muller, *Covid Could Be Surging in the U.S. Right Now and We Might Not Even Know It*, BLOOMBERG (Apr. 10, 2020), <https://www.bloomberg.com/news/articles/2022-04-10/covid-19-could-be-spreading-undetected-in-u-s>.

¹⁰ FCI Danbury, FEDERAL BUREAU OF PRISONS, <https://www.bop.gov/locations/institutions/dan/> (last visited Apr. 25, 2022).

¹¹ *See id.* The Federal Bureau of Prisons has developed a COVID-19 Modified Operations Matrix, a pandemic response plan with three modified levels of operations that reflect inmate medical isolation rate, percentage of fully vaccinated staff and inmates, and transmission rate in the county in which the facility is located. *COVID-19 Modified Operations Matrix*, FEDERAL BUREAU OF PRISONS (Aug. 16, 2021), https://www.bop.gov/foia/docs/attachment2_covid19_modified_ops_matrix_2021_08_16.pdf; *BOP COVID-19 Coronavirus – Modified Operational Levels*, FEDERAL BUREAU OF PRISONS, <https://www.bop.gov/coronavirus/> (last visited Apr. 22, 2022).

¹² Dave Collins, *Senators say they were denied full access to federal prison*, ASSOCIATED PRESS (Jan. 26, 2022) <https://apnews.com/article/coronavirus-pandemic-health-connecticut-richard-blumenthal-chris-murphy-fb011a9862236c4652b45774e064292a>.

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-4-

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CAHILL GORDON & REINDEL LLP

-5-

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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ARGUMENT

This Court should grant Ms. Morton a further adjournment of her surrender date, both due to heightened transmission rates of COVID-19 as a result of the new Omicron subvariants, and in light of her serious health conditions, [REDACTED]

The recent uptick in cases of COVID-19 appears to be causing another surge in cases. Given the high level of transmissibility of the new Omicron subvariants, an enclosed congregate setting like prison would put Ms. Morton at great risk of infection, serious illness, or even death.¹⁸ This risk is particularly acute [REDACTED]

[REDACTED] Compounding this concern is FCI Danbury's current COVID-19 risk rating, which indicates that there is the potential for a high level of transmission within the prison. Given Ms. Morton's current health concerns, it is still not safe for Ms. Morton to begin her term of incarceration.

[REDACTED] a goal that will be difficult to accomplish in a prison setting, especially during a period when the Bureau of Prisons has designated the facility as Level 3 Risk.

* * *

Given the above, we respectfully request that the Court grant Ms. Morton's request for an additional adjournment of her surrender date.

Respectfully submitted,

/s/ Nola B. Heller

Nola B. Heller
Danielle M. Simard
Sabrina Alvarez-Correa

¹⁸ See generally Dkt. No. 976 (describing the risks that COVID-19 poses to Ms. Morton in light of her specific preexisting health conditions).

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The Honorable Ronnie Abrams
United States District Judge
Southern District of New York
40 Foley Square, Room 240
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BY EMAIL

cc: AUSA Rebecca Mermelstein
AUSA Negar Tekeei

Ms. Morton's surrender date is hereby adjourned until August 8, 2022. If she seeks to adjourn that surrender date further, she shall be prepared to call her doctors to testify at a hearing no later than July 8, 2022.

SO ORDERED.



Ronnie Abrams, U.S.D.J.
May 2, 2022

Exhibit 1

Document Filed Under Seal Pursuant to the Court's
Individual Rules, Rule 10(E)(i)